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AGRICULTURE IN THE GATT: TOWARD THE NEXT ROUND OF MULTILATERAL TRADE NEGOTIATIONS

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FOREWORD

More than six years have elapsed since the conclusion of the last round of multilateral trade negotiations, held under the auspices of the General Agreement on Tariffs and Trade (GATT), a multilateral agreement governing the conduct of world trade. While the United States was able to achieve some progress toward its goal of liberalizing world trade, that successs was largely limited to trade in manufactured goods. As was the case in previous rounds of GATT negotiations, agricultural trade issues remained largely unresolved. These issues have become critical sources of conflict between the United States and its trading partners as global economic recession, worldwide surpluses of agricultural commodities, and protectionist pressures and policies in the United States and other countries have exacerbated ongoing trade problems.

U.S. farmers have been particularly hard hit in recent years, with farm exports falling from a peak of $43.8 billion in 1981 to an estimated $27.5 billion in 1986, the lowest level since 1978. A new round of negotiations, scheduled to begin this fall, certainly will not be a panacea for all our agricultural trade problems. However, if the negotiations do resolve such contentious issues as export subsidies, GATT dispute settlement procedures and nontariff barriers to trade, we will see freer and fairer trade in agricultural commodities, benefiting not only the United States but all members of GATT.

Up to now, agriculture has been largely ignored or inadequately dealt with under the GATT. As these inadequacies have become more and more evident over the past few years, confidence in the entire GATT system has been eroded. This country has been long concerned about the problems of agriculture in the GATT. This issue was formally addressed as far back as 1982 at the GATT Ministerial meeting in Geneva, in which I participated. In their concluding declaration, the Ministers agreed "to bring agriculture more fully into the multilateral trading system by improving the effectiveness of GATT rules...and to seek to improve terms of access to markets and to bring export competition under greater discipline." The Ministers also agreed to the establishment of a Committee on Trade in Agriculture to examine and make recommendations on all matters affecting agricultural trade. While valuable, these measures were only preparatory in nature. The task of bringing agriculture more fully under GATT rules remains to be addressed and must be addressed in the new round if GATT is to continue to be a significant force in international trade in the future.

Although this report does not necessarily represent the opinions of all the members of the Committee on Agriculture, Nutrition, and Forestry, in an effort to assist Members of Congress in further understanding the treatment of agriculture under the GATT, I am pleased to print this report written by Charles Hanrahan, Penelope Cate and Donna Vogt of the Congressional Research Service. The report reviews the basic principles and procedures of the GATT, the special treatment accorded agriculture under the General Agreement, the results for agriculture of the several, successive rounds of multilateral trade negotiations, unresolved agricultural trade problems and proposals for dealing with them in the new round of negotiations, scheduled to begin in the fall of this year.

Jesse Helms,
Chairman.

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AGRICULTURE IN THE GATT: TOWARD THE NEXT ROUND OF MULTILATERAL TRADE NEGOTIATIONS

INTRODUCTION

Preparation for a new round of multilateral trade negotiations (MTNs) under the auspices of the General Agreement on Tariffs and Trade (GATT) is well underway. As it has since the establishment of the GATT in 1947, the United States has taken the lead in calling for a new round of MTNs. Agricultural trade issues will again figure prominently on the agenda. A timetable for initiating the new round of negotiations has been established, and preparatory work in the GATT to lay the foundation for the eighth round of MTNs should culminate in the adoption of a formal agenda in September 1986. If the United States and the other major trading countries, especially the European Economic Community (EEC) and Japan, agree upon this agenda and the timetable for accomplishing it, the negotiations could begin in late 1986 or early 1987.

More than six years have elapsed since the conclusion of the last round of multilateral trade negotiations, the Tokyo Round (1973-1979), and issues involving agricultural trade, largely unresolved in that and previous negotiations, have become critical sources of conflict between the United States and other major trading countries, notably the EEC and Japan.

The main agricultural trade issues of current concern are widespread reliance on quantitative and other nontariff barriers to restrict agricultural trade, fierce competition for export markets, the effectiveness of the GATT dispute settlement procedures, the effects of domestic agricultural policies on world agricultural trade, and developed countries' agricultural trade relations with developing countries. Global economic recession, worldwide surpluses of agricultural commodities, and protectionist pressures and policies in many countries have exacerbated these trade problems. Policymakers in the United States and in the other major trading countries have increasingly focused their attention on possible solutions to these problems.

Although the Tokyo Round made some progress in applying GATT rules and procedures to agricultural trade, the United States is looking to a new round to bring agriculture more fully into the GATT framework. This paper reviews the basic principles and

procedures of the GATT, the special treatment accorded agriculture by the General Agreement, the results for agricultural trade of the several successive rounds of multilateral trade negotiations, plus unresolved agricultural trade problems and proposals for dealing with them.

I. BASIC PRINCIPLES AND PROCEDURES OF THE GATT

The General Agreement on Tariffs and Trade (GATT) is a multilateral agreement governing the conduct of world trade. It contains a code of principles and rules for the conduct of international trade and provides a framework for consultation, dispute settlement, and negotiation on trade issues arising among its signatories. The GATT also serves as a forum for negotiating changes in tariff and nontariff barriers to trade. Since 1947 when the GATT was signed by the United States and 22 other countries, it has grown in membership to include 90 contracting parties, 31 countries who apply it de facto, and one country that has acceded to it provisionally. These participants account for nearly 90 percent of world trade.

Basic Principles

At the time it was entered into, the GATT represented, above all, a commitment on the part of its signatories to a progressive liberalization of world trade within a multilateral framework. GATT was designed to prevent a recurrence of the trade conflicts that characterized the 1930s and contributed to the outbreak of World War II. The rules and procedures spelled out in the General Agreement were intended to facilitate progress toward a more open world trading system in the post-World War II era. The basic principles contained in the Agreement are:

--Nondiscrimination and reciprocity in trade
--Protection through tariffs only
--Binding of tariff levels negotiated among members
--Notification, consultation, and arbitration of disputes 1/

Nondiscrimination and Reciprocity

The first and most basic principle of the GATT is that trade must be conducted on the basis of equality of treatment of all trading partners, or nondiscrimination. Embodied in the most-favored-nation (MFN) clause, this rule commits member countries

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1/ The discussion of the basic principles of the GATT is derived from the text of the General Agreement itself. Two nontechnical interpretations of the principles, rules, and procedures of the GATT are Honore M. Catudal, The General Agreement on Tariffs and Trade: An Article-by-Article Analysis in Layman's Language, Department of State Bulletin 7235, Commercial Policy Series 179 (Washington: U.S. Government Printing Office, July, 1961), and GATT Information Service, General Agreement on Tariffs and Trade: What It Is, What It Does, Geneva, Switzerland, November 1984.

to grant to each other treatment as favorable as they give to any country in the application and administration of import and export duties or other charges. Exceptions to the MFN principles are made in the case of regional trading groups, such as the EEC, and in the case of the developing countries from whom full reciprocity in trade matters is not required.

Protection Through Tariffs

The second basic principle of the GATT is that protection of domestic industries is to be provided by the customs tariff rather than by nontariff measures, such as quotas. The objective of this principle is to make the extent of protection "transparent," that is, clearly visible to all trading partners and therefore easier to negotiate. A tariff also allows more price competition than other protective measures, such as quotas, and provides protection through the working of the market rather than by nonmarket forces.

Binding of Tariffs

The third principle is that negotiated tariff levels are "bound" in GATT. A "bound" tariff level is a guarantee by the concession-granting member to other members that the negotiated tariff rate will not be increased without renegotiation, consultation and, usually, compensation. 2/ Bound tariff concessions can only be negotiated or withdrawn every three years. 3/ This time limit, together with provision for compensation and even retaliation when bound tariffs are modified, discourages countries from unbinding negotiated duties. The transparency of protection provided by tariffs, combined with the principle of binding of tariff levels negotiated between member countries, is intended to provide a "stable and predictable basis" for international trade.

Notification, Consultation and Dispute Settlement

Additional principles pledge GATT members to avoid damage and impairment of the trade interests of the other members. To that end, members must consult with one another on trade issues when a member feels its trade interests under the GATT are being prejudiced. If consultations do not produce satisfactory results, then a member may file a complaint. Complaints are investigated and recommendations, or rulings, are made by GATT

2/ See discussion of compensation and retaliation below.

3/ A number of countries have invoked Article XXVIII, paragraph 5 in order to reserve their right to take steps to modify tariff bindings at any time through negotiation or consultation.

contracting parties acting in concert. Such rulings are binding on the parties to a dispute, but their enforceability depends ultimately on the willingness of signatories affected by such rulings to uphold GATT principles and rules. The GATT often makes use of panels of experts to investigate and make recommendations to the parties to a dispute. As a result of this process, the injured party or parties may be authorized to suspend or withdraw concessions or other obligations incurred under the GATT. 4/

GATT members may also settle trade disputes through more informal procedures, for example, through informal bilateral consultations. Sometimes the threat of retaliation by an injured party is sufficient to dissuade another country from taking a particular action.

4/ Appendix 1 provides more detail on the dispute settlement procedures.

II. SPECIAL PROVISIONS FOR AGRICULTURE IN THE GATT

The basic principles of the GATT--nondiscrimination in trade and protection by bound duties--which are contained in Articles I and II apply in principle to both agricultural and nonagricultural trade. However, several important exceptions to these basic principles written into the General Agreement have the effect of according agricultural trade a special status under the GATT.

Article XI of the General Agreement contains a general prohibition on the use of quantitative import and export restrictions, such as quotas, by the contracting parties. There are, however, three exceptions to this general prohibition that relate to agriculture: (1) temporary export restrictions may be applied to prevent or relieve shortages of food or other essential products; (2) import restrictions may be used for any agricultural or fisheries product where such restrictions are necessary to the enforcement of domestic marketing or production restriction programs or for the removal of temporary surpluses; and (3) both import and export restrictions may be used if necessary for the application of standards for classification, grading, or marketing of commodities.

Article XVI also includes special provisions for agriculture. The article contains a general prohibition on the use of export subsidies. However, it only dissuades member countries from subsidizing exports of primary products, whether agricultural or non-agricultural, enjoining the contracting parties to commit themselves to "seek to avoid" the use of export subsidies on these products. However, if contracting parties apply export subsidies on primary products, they should do so in a manner that will not give them "more than an equitable share of world export trade" in the products concerned. 5/

Article XVI also contains provisions relating to domestic subsidies in agriculture, as well as in other productive sectors. This article covers any subsidy such as income or price support which has the effect of increasing exports or decreasing imports. Although domestic production subsidies are not prohibited, the contracting parties are required to notify GATT of such subsidies and to consult with other contracting parties when requested.

The GATT Waiver for the United States

An important development affecting GATT treatment of agriculture was the granting in 1955 of a waiver to the United

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5/ See also the discussion of the Subsidies Code below.

States permitting it to apply quantitative import restrictions on a wide range of agricultural products under price support programs. The United States needed the waiver of its obligations under Article II (nondiscriminatory application of concessions) and Article XI (which prohibits quantitative restrictions) to reconcile provisions in domestic law with international obligations under GATT.

The United States requested the waiver because of a 1935 amendment to the Agricultural Adjustment Act of 1933 6/ which authorizes the President to impose fees or quotas on imported agricultural products that undermine the operation of any U.S. Department of Agriculture domestic commodity program whether or not they include production or marketing controls. 7/ Section 22 was amended in 1951 to require that "No trade agreement or other international agreement heretofore or hereafter entered into by the United States shall be applied in a manner inconsistent with the requirements of this section." 8/

The United States, along with other GATT participants, had been allowed to impose quantitative restrictions on certain agricultural imports under the general exception to Article XI which permits import restrictions on agricultural or fisheries products where such restrictions are necessary to the enforcement of domestic marketing or production restrictions or for the removal of temporary surpluses. However, Section 22 and its 1951 amendment meant that the U.S. could and in fact was obligated,

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6/ 7 U.S.C. 624. Section 22 was added by Section 31 of the Act of August 24, 1935, P.L. 74-320, 49 Stat. 773.

7/ The Secretary of Agriculture has the responsibility to advise the President if the import of any article renders ineffective or interferes materially with any U.S. price support program or its operation. If the President agrees, he orders an investigation of the situation by the U.S. International Trade Commission (ITC). If the ITC finds that imports are causing interference with programs, the President may impose on the imported article fees not in excess of 50 percent ad valorem or quotas not less than 50 percent of the quantity imported during a representative period. The President may take interim action pending a report by the ITC if a condition exists requiring emergency treatment. The fees or quotas imposed may be suspended or terminated if the President finds that the imported article is no longer interfering with the operation of the domestic support program. The President is not required to follow the recommendation of the ITC. However, under all circumstances, the determination or decision of the President is final. Jasper Womach, Section 22 Authority, CRS Report No. 84-155 ENR, April 30, 1984.

8/ 7 U.S.C. 624(f).

without regard to GATT rules, to impose quantitative import restrictions on any agricultural product when imports were found to be interfering with the operation of any USDA program. To remedy the inconsistency between Section 22, as amended in 1951, and the rules of GATT, the United States sought and received from the other GATT members a waiver of its obligations under Articles II and XI.

Since its enactment in 1935, Section 22 has been used to restrict imports of cotton, wheat, almonds, milk, peanuts, flaxseed, filberts, oats, rye, barley, tungnuts, and sugar. Section 22 fees and quotas have been terminated for most of the listed commodities. However, at present, quotas are in effect for peanuts, cotton, milk and various other dairy products including cheese.

The special treatment accorded agriculture by the GATT reflects the domestic agricultural policies of many member countries, including the United States, which are designed, in part, to protect farmers from free market forces. This special treatment, particularly the exceptions to Article XI, and the U.S. waiver, is contrary to the basic GATT goal of trade liberalization in that it continues to provide a precedent for other members to use quantitative restrictions and other measures to protect their agricultural sectors. 9/ It also provides countries with a rationale for pursuing domestic policies which may adversely affect the trade of others.

9/ John H. Jackson, World Trade and the Law of the GATT: A Legal Analysis of the General Agreement on Tariffs and Trade, Indianapolis, Bobbs-Merrill, 1969, pp. 733-735.

III. AGRICULTURAL TRADE NEGOTIATIONS

The GATT Framework for Trade Negotiations

In addition to providing a set of principles and rules for the conduct of international trade, the GATT also serves as a forum for international trade negotiations. Typically, trade negotiations under GATT have involved mutually agreed upon balanced reductions in tariffs. In addition, GATT concessions on tariffs involve the "binding" of duties at reduced or existing levels or agreements that individual duties will not exceed specified levels. A bound duty cannot be changed without consultation. If it is changed, compensation may be due the affected trading partner in the form of reductions in tariffs or bindings on rates of other products to replace the trade benefits withdrawn or modified. If the affected parties find that the compensation offered is not satisfactory, they may retaliate by withdrawing or suspending their trade concessions.

A much discussed case of compensatory withdrawal or suspension of trade concessions was the so-called "chicken war" between the United States and the EEC. During the early 1960s, the EEC substantially increased its import charges on frozen poultry imported from the United States and U.S. exports of frozen poultry to EEC countries declined substantially. Through consultations in the GATT, the United States sought to have the EEC reduce its import charges to levels existing in 1960. The U.S.-EEC consultations failed to bring about any agreement and a GATT panel of experts was formed to consider the issue. The panel determined that the value of U.S. trade affected by the restrictions on poultry was $26 million. Both the United States and the EEC concurred with the panel's determination. However, when the EEC took no action to modify its restrictions on poultry imports, the United States notified the GATT that it was suspending tariff concessions made under trade agreements on brandy, certain types of motor trucks, dextrine, and starches. The value of the concessions withdrawn by the United States corresponded approximately to the value of tariff concessions the United States had lost because of EEC action with respect to poultry. 10/

As nontariff barriers to trade, such as quotas, licensing procedures, or technical and administrative requirements, have proliferated in agriculture and in other areas, GATT negotiations have been enlarged to include these kinds of trade problems. It has, however, been more difficult to negotiate the reduction or

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10/ Thomas B. Curtis and John Robert Vastine, Jr., The Kennedy Round and the Future of American Trade, N.Y., Praeger Publishers, 1971, p. 76; and Simon Harris, Alan Swinbank and Guy Wilkinson, The Food and Farm Policies of the European Community, N.Y., John Wiley and Sons, 1983, p. 276.

elimination of nontariff rather than tariff barriers for a number of reasons. The nontariff barriers are not as "transparent" as tariffs, and therefore not so amenable to the traditional negotiating procedures applicable to tariff reductions and striving for a balancing of concessions. In addition, many countries consider their nontariff barriers as part of their domestic agricultural policy, and therefore not negotiable under the GATT. Moreover, since many nontariff barriers are illegal under GATT rules, countries are unwilling to grant concessions in exchange for the removal or reduction of measures that should not have been imposed in the first place.

GATT negotiations have been more successful in liberalizing industrial than agricultural trade. The relative lack of success in removing trade barriers in agriculture is due largely to the strong links between domestic agricultural policies and trade, the special provisions for agriculture in the GATT, the prevalence of nontariff barriers and the difficulties in negotiating their removal. In contrast to agriculture, tariffs have been a widely used form of protection applied to imports of manufactures and GATT negotiating procedures are particularly geared to tariff reduction and binding.

Negotiations under the GATT are carried out in sessions, termed "rounds" that often last for several years. There have been seven of these rounds of multilateral trade negotiations since the inauguration of the GATT: Geneva (1947); Annecy, France (1949); Torquay, England (1950-51); Geneva (1955-56); the Dillon Round (1960-61), the Kennedy Round (1963-67), and the Tokyo Round (1973-79). The first four rounds concerned themselves primarily with tariff reductions on nonagricultural trade. In the Dillon and Kennedy rounds, agricultural trade issues received greater attention. Agricultural trade issues and nontariff barriers received the greatest attention to date in the Tokyo Round.

U.S. participation in these rounds is covered by legislation which authorizes the President to enter into trade agreements. As required by the Trade Act of 1974, Congress also enacted legislation following the latest MTN to authorize the implementation of the nontariff agreements reached during the round. 11/ The United States has taken the lead in calling for every round of MTNs since Geneva in 1947. The United States has also been the strongest exponent of fuller integration of agricultural trade into the GATT framework, but because of its GATT waiver with respect to Section 22, the United States' support for freer agricultural trade is often questioned by other countries.

Very little progress was made in liberalizing agricultural trade in the first four rounds of multilateral trade negotiations. The three most recent rounds discussed below reveal the

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11/ See Appendix 2 for a detailed listing of trade legislation.

changing nature of agricultural trade problems and how GATT negotiations have responded to them. Since the Dillon Round, which began in 1960, trade issues between the United States and two of its major trading partners, the EEC and Japan, have dominated the MTNs for agriculture.

The Dillon Round (1960-61)

The Dillon Round was entered into primarily at the instigation of the United States because of its concern about potential economic discrimination from the newly formed (1958) European Economic Community as it began implementing by stages a common external tariff (CXT) and withdrew tariff concessions formerly agreed to by individual members. 12/ Adoption of the CXT meant that each member country of the EEC had to substitute Community-wide tariffs for its individual duties. In most cases, the Community-wide tariff for a product was an average of each country's previous tariff level. At the same time, the EEC began to use variable levies instead of tariffs and quotas as the primary means of protecting agricultural products. In most instances, the combination of the CXT and the variable levy applied to agricultural products resulted in higher levels of protection against imports into the EEC as a whole than had prevailed in the individual countries.

The Dillon Round was the first time that the EEC negotiated as a single entity and the United States and other non-EEC export countries wanted to maintain and extend their access to the EEC market. In agriculture, the United States was particularly concerned that the combination of the CXT and the variable levies not become more discriminatory against its products than the individual country duties had been. The United States tried to obtain compensation from the EEC in the form of guaranteed access to the EEC market at existing export levels, a request the EEC refused to grant. Ultimately, the United States and the EEC agreed to defer negotiations on trade in wheat, corn, rice, sorghum, and poultry, and to conduct future bilateral or multilateral negotiations on these products on the basis of tariff bindings in effect as of January 1, 1960. 13/

12/ For more information on the Dillon Round, see Speaking of Trade: Its Effects on Agriculture, Agricultural Extension Service, University of Minnesota, November, 1978; Congressional Quarterly, Inc., Trade: U.S. Policy Since 1945, Washington, D.C. 1984, Chapter 2; U.S. Dept. of Agriculture, Foreign Agriculture Service, GATT Tariff Conference and American Agriculture: A Summary of the Results of the Tariff Negotiations Recently Concluded by the United States in Geneva with Other Contracting Parties to the GATT, Washington, May 1962.

13/ The agreements to defer negotiations and to conduct them on the basis of tariff rates and bindings in effect as of January 1, 1960 were termed "standstill arrangements."

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The Dillon Round did achieve some success in overall tariff negotiations. The agreed upon tariff cuts averaged 20 percent, but were mostly for industrial products. The United States received trade concessions from all sources on $160 million worth of U.S. agricultural exports in exchange for concessions on $142 million worth of agricultural imports (valued at 1960 trade levels). 14/ The most significant concession achieved by the United States, although its economic potential was not recognized at the time, was the duty free binding for the entry of soybeans and corn gluten feed, and near duty free binding for soybean meal, other oilseeds and cotton, into the European Economic Community.

The Kennedy Round (1963-67)

Although traditional tariff reductions and bindings were also aims of this round, the negotiations were expanded to include consideration of nontariff barriers and domestic agricultural policies and their effects on trade. 15/ The United States had several objectives going into this round of negotiations. It wanted to moderate the growth of agricultural barriers in the EEC and to maintain the EEC market for U.S. agricultural products. However, the EEC was not willing to negotiate modifications of its domestic agricultural policies, particularly as it was in the early stages of developing its Common Agricultural Policy (CAP). 16/

The United States also wanted industrial and agricultural tariff concessions to be linked because it felt larger

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14/ GATT Tariff Conference and American Agriculture, Summary of the Results of the Tariff Negotiations Recently Concluded by the United States in Geneva with Other Contracting Parties to the GATT, Foreign Agricultural Service, USDA, updated, pp. 1-3, as cited in U.S. Congress, Senate, Committee on Finance, MTN Studies: Results for Agriculture, A Report Prepared for the Subcommittee on International Trade, 96th Congress, 1st sess., Washington, D.C. Govt. Print. Off., 1979, p. 7.

15/ Additional information on the Kennedy Round can be found in: U.S. Dept. of Agriculture, Foreign Agriculture Service, Report on the Agricultural Trade Negotiations of the Kennedy Round, FAS-M-193, September 1967; Speaking of Trade: Its Effect on Agriculture, U.S. Dept. of Agriculture, Agricultural Extension Service, University of Minnesota, Special Report No. 72, November 1978; and Thomas B. Curtis, and John Robert Vastine, Jr., The Kennedy Round and the Future of American Trade, New York, Praeger Publishers, 1971.

16/ For a full discussion of the CAP, see Donna U. Vogt and Jasper Womach, The Common Agricultural Policy of the European Community, Report 84-54 ENR. CRS. March 1984.

concessions would result if industrial and agricultural trade concessions could be exchanged. The United States also felt that linking agricultural with industrial trade in the Kennedy Round would result in bringing agriculture more fully under GATT principles and rules. Again, however, the EEC did not share the U.S. position on simultaneous negotiations on agriculture and industry, because its internal policies in the CAP had not been fully agreed upon. Ultimately, negotiations on agriculture were delayed for two years because of disagreements between the United States and the EEC over procedures. When they did get underway in 1965, the agricultural negotiations were conducted separately from the industrial negotiations and on a product-by-product basis.

As is evident from the above discussion, the United States and the EEC once again dominated the agricultural portion of this MTN Round. For the most part, Japan assumed a fairly passive role in the agricultural negotiations. When the Kennedy Round began, Japan was primarily concerned with stemming its outflow of foreign exchange rather than with liberalizing its agricultural imports, many of which were strictly limited by foreign exchange controls.

The United States did, however, attempt to use the negotiations to acquire greater access to the Japanese market for U.S. agricultural exports. The United States wanted Japan to reduce tariffs, enlarge its quotas regulating agricultural imports, and modify certain other nontariff barriers to trade such as foreign exchange controls on imports. Japan was unwilling to offer tariff or nontariff concessions on products that were competitive with its domestically produced products, such as food grains and some feedstuffs, yet did ultimately offer tariff concessions on products that did not compete with domestic commodities, such as soybeans (for human consumption) and prepared animal feeds.

The actual agricultural negotiations of the Kennedy Round centered on trade in grains. The United States had three specific objectives with respect to grains:

1. Guaranteed access for U.S. grains to the important markets of the world (especially the EEC and Japan);

2. An increase in the level of world trading prices governed by the International Wheat Agreement; and

3. Establishment of the principle of multilateral sharing of the provisions for food aid. 17/

17/ John Schnittker, "The Kennedy Round: A Gain for U.S. Agriculture," remarks prepared for delivery by Deputy Secretary of Agriculture John Schnittker to the Spring Conference on Cooperatives, Salina, Kansas, June 5, 1967.

In conjunction with the other major exporting countries, the United States sought an arrangement which would guarantee existing levels of grain imports by the EEC, United Kingdom,18/ and Japan, and a share in the future growth of the grain imports of those countries. The United States and the other grain exporters asked for a guarantee of 15 percent of the EEC market for grains. The EEC negotiators were prepared to offer only a 10 percent share of their grain market to the exporting countries, reserving 90 percent for their own farmers. With no compromise forthcoming on either side, the notion of guaranteed access was abandoned.

In conjunction with the grain access arrangement, the EEC offered to identify and bind for three years the existing level of price support for farm products. This proposal to bind domestic support levels was significant because it represented an effort to extend a traditional GATT principle, i.e., binding of tariffs, to domestic policy measures. In addition, the EEC proposed the establishment of a set of international reference prices for basic farm commodities. The difference between the domestic price and the international price would be the basis for determining the level of import levies or export subsidies. This was the margin of support approach or "montant de soutien", as it was called.

The United States and the other major exporting countries rejected the EEC proposal for binding support levels and establishing support margins for several reasons: the proposal contained no commitment for access to the EEC market; it would have allowed the EEC's variable import levy to operate unaffected; and it could have exacerbated the situation if the EEC used this method to limit the access to EEC markets of those products already covered by bound tariffs, such as soybeans and other oilseed products.

Despite U.S. efforts, little progress was made in the Kennedy Round in bringing nontariff trade barriers and domestic agricultural policies under GATT rules. The major parties to the negotiations--the United States and the EEC--failed to reach agreement primarily because of domestic policy considerations. In particular, the Kennedy Round did not accomplish what the United States had hoped it would with respect to the EEC, that is, significant liberalization of its agricultural and trade policies.

Nevertheless, agricultural trade concessions of major value were offered and received by participants in the Kennedy Round. The United States received tariff concessions on $866 million worth of agricultural trade and gave concessions on agricultural products whose trade was valued at $860 million (including

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18/ The United Kingdom did not become a member country of the EEC until 1973.

concessions to the developing countries on almost $260 million worth of tropical products). 19/ The U.S. granted concessions to the EEC on $238 million worth of agricultural imports from the Community, while receiving concessions from the EEC on $279 million worth of its exports to the Community. The U.S. granted concessions to Japan on $20.9 million worth of Japanese agricultural imports into this country, while receiving concessions on $240 million worth of U.S. agricultural exports to Japan. 20/

Agreement was also reached in the Kennedy Round on a new International Grains Agreement and a Food Aid Convention. The arrangement established minimum and maximum prices for wheat, but no provisions were made for any other grains. Within the range established, prices were to fluctuate in line with supply and demand changes. The wheat arrangement fell apart in 1968 when worldwide surpluses forced wheat prices below the minimum established by the agreement.

The Food Aid Convention provided that the developed countries would join in making available annually 4.5 million metric tons of grain as food aid to the developing countries. The United States agreed to provide 1.9 million tons of this total, or 42 percent. The EEC agreed to provide 1 million tons. The Food Aid Convention was renewed and expanded in 1971 and again in 1980.

The Tokyo Round (1973-79)

The Tokyo Round was convened in 1973 and lasted over five and one-half years. The agenda for the Tokyo Round is spelled out in the Tokyo Declaration of September 1973. 21/ Six areas were identified for the negotiations: tariffs, nontariff measures, agriculture, tropical products, multilateral safeguards, and the GATT framework itself. As in all the previous rounds, tariff reduction was a main focus of the negotiations. The Tokyo Round differed from previous rounds, however, in the prominence

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19/ U.S. Congress, Senate, Committee on Finance, MTN Studies: Results for U.S. Agriculture, p. 10.

20/ U.S. Department of Agriculture, Foreign Agriculture Service, Report on the Agricultural Trade Negotiations of the Kennedy Round, FAS-M-193, September 1967, pp. 90-91.

21/ GATT, Basic Instruments and Selected Documents, Supplement No. 20, Geneva, 1974, pp. 19-22.

accorded negotiations on nontariff barriers to trade and in identifying agriculture as a separate agenda item. 22/

During this Round, the United States accorded high priority to the problems of agricultural trade unresolved in previous trade negotiations. And once again, U.S.-EEC trade differences dominated the agricultural negotiations. As in the Kennedy Round, the United States sought to achieve, through negotiations, substantial reductions in the high levels of agricultural support and protection provided to producers in the European Economic Community. And once again, the EEC resisted substantial liberalization and revision of its agricultural policy arguing instead for a variety of measures including international arrangements for sharing world commodity markets.

The European Economic Community outlined its position on the agricultural negotiations in its "Overall Approach" 23/ to trade negotiations agreed to at Luxembourg in June of 1973. The EEC's aim in the negotiations was to conclude commodity agreements among GATT member countries that would stabilize world markets. For grains and dairy, these agreements were to include negotiated minimum and maximum prices and storage measures to regulate supply. The Community declared that "Elements Basic to Community Unity" may not be called into question during the negotiations. The CAP was specifically identified as one of these basic elements. According to the Luxembourg text, "The Common Agricultural Policy corresponds to special conditions of agriculture within the Community. Its principles and mechanisms shall not be called into question and are, therefore, in no way a matter for negotiation."

In response to the EEC's position, the United States stressed the need to deal with levels and techniques of agricultural support and improvements in access to the markets of the

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22/ The Tokyo Round is discussed in Warley, T.K., Agriculture in an Interdependent World: U. S. and Canadian Perspectives, Canadian-American Committee, National Planning Association, May 1977; Schnittker Associates, Multilateral Trade Negotiations: Results for Agriculture, A Report prepared for the Congressional Research Service, Washington, D.C., April 1979; Jackson, John H., "Impact of the Multilateral Trade Negotiations on the Institutions of International Trade, Senate Committee on Finance, MTN Studies No. 4, U.S. Government Printing Office, Washington, D.C., 1979; and U.S. Department of Agriculture, Foreign Agriculture Service, Report on Agricultural Concessions in the Multilateral Trade Negotiations, FAS-M 301, June 1981.

23/ Reprinted in British-North American Committee, The GATT Negotiations 1973-75, (1974) from the European Communities Commentary, Brussels, July 1973, pp. 11-13.

importing countries for low-cost producers. The United States was strongly opposed to the concept of international agreements with price fixing, market sharing or stock management rules because it felt such arrangements would severely limit its access to world markets for the products it produced at relatively low cost. Not unexpectedly, the United States and the EEC failed to reach agreement on measures to moderate the effects of domestic policy on agricultural trade or on international commodity agreements with significant economic provisions.

In the case of Japan, the United States sought to further the process of trade liberalization begun in the Kennedy Round and to increase its access to the Japanese market. In particular, the United States wanted to obtain additional tariff reductions and bindings as well as quota reductions especially for beef and citrus products. Japan appeared willing to make some concessions to the United States on both tariff and nontariff barriers to trade in agricultural products, but this willingness to negotiate was limited by the political opposition of powerful farm groups in Japan who generally opposed trade liberalization.

The results of the Tokyo Round were substantial in terms of tariff and quota concessions. The United States received concessions on duty bound products of $1.3 billion (1976 trade values) and $2.5 billion worth of concessions on products covered previously by nontariff barriers (mainly quotas). When fully implemented in 1987, these tariff and nontariff concessions are expected to increase U.S. agricultural exports by $400-$500 million annually. 24/ The EEC and Japan together account for about 80 percent of the increase in U.S. trade value expected from the Tokyo Round, with their shares being around 40 percent each. In the case of Japan, the major concessions were expanded quotas for beef and citrus products. For the EEC, the major concessions were reduced tariffs on tobacco, beef, and poultry. The United States granted import concessions covering $2.4 billion worth of agricultural trade, mostly on cheese and livestock products.

Results in other areas, particularly those included in the original agenda for the Round were mixed. In addition to focusing attention on both tariff and nontariff agricultural trade problems, the Tokyo negotiations gave special attention to tropical products because of their importance to developing countries. Some tariff concessions on tropical products were granted to the developing countries, but discussion of some of the major issues of concern to the developing countries, such as

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24/ James P. Houck,"U.S. Agricultural Trade and the Tokyo Round," Law and Policy in International Business, Vol. 12, March 1, 1980, p. 288; and U.S. Congress, Senate Committee on Finance, MTN Studies: Results for Agriculture. p. 17-25.

greater access to developed country markets for processed products, was largely deferred.

Safeguards, the measures that countries use to protect domestic industries from injury caused by import competition, were also included on the agenda. No agreement, however, was reached on this item during the Round.

The GATT framework was also on the agenda in order to stimulate review and possible revision. The objective was to make the Agreement more suited to dealing with the problems of export competition among members, the problems of developing countries, 25/ and to improve and accelerate the process of dispute settlement among members. Discussion of this agenda item and of the issues of nontariff barriers led to the development of "codes of conduct" for international trade; the most important for agriculture is the Code on Subsidies and Countervailing Duties (Subsidies Code). 26/

The Subsidies Code was a major accomplishment of the Tokyo Round. It was intended to provide more specific guidelines than the General Agreement itself for counteracting the adverse effects of a major nontariff barrier to trade, export subsidies. The Code also addressed the problems of domestic subsidies and their effects on trade. The Subsidies Code includes a ban on subsidies aimed directly at export promotion, except export subsidies for primary agricultural products. The Subsidies Code reaffirms the provision of Article XVI that the permitted export subsidies may not be used to gain more than an equitable share of the world export market. It adds some precision to this rule by defining equitable share as the average share in three recent, representative years. Subsidies for domestic production are recognized as a frequently used tool of domestic agricultural policy, but countries should "weigh the adverse consequences" of such policies on the trade interests of other countries.

In contrast to the success in achieving the Subsidies Code, the Tokyo Round failed, from the U.S. perspective, to conclude a new International Wheat Agreement (IWA) with economic provisions. The United States had taken the lead in proposing a new IWA that featured an international system of nationally held and managed wheat reserves. Agreement could not be reached, however, between the United States, the EEC, and the developing countries on the release and acquisition prices to be used or on other critical issues, such as the size of the total reserve, the size of each participating country's reserve, and financing the costs of reserves held in the developing countries. Failure to reach agreement on these issues resulted in the extension of the 1971

25/ Results for developing countries are discussed below.

26/ Appendix 3 lists and briefly describes the codes agreed to in the Tokyo Round.

IWA, which had no economic provisions, but did include provisions for consultation and for contributions of food aid by the developed countries.

The Tokyo Round also resulted in the establishment of two additional international consultative arrangements. One, the dairy arrangement, establishes minimum export prices for dairy products and sets up an International Dairy Products Council for the purposes of exchanging information and consultation. 27/ The other, the bovine meat arrangement, sets up an International Meat Council with the same purposes, but has no price provisions. Each does, however, provide a forum for the nonadversarial discussion of dairy or meat trade and thus holds the prospect for being a stabilizing influence in meat and dairy products.

27/ The United States dropped out of the dairy arrangement in December 1984 as a result of a dispute with the EEC over its subsidized disposition of surplus butter stocks.

IV. AGRICULTURAL ISSUES IN THE NEXT ROUND OF MTNs

Developments Since the Tokyo Round

Concerns that the Tokyo Round had dealt inadequately with a number of trade issues, including agriculture, dispute settlement procedures, safeguards, and trade with developing countries, prompted the United States to urge the convening of a GATT Ministerial meeting in Geneva in November 1982. In addition, global economic recession and its effects on international trade, reflected in actual or threatened protectionist measures taken by some GATT members, were also responsible for the insistence of the United States on this high level GATT meeting. The Ministerial meeting itself did not resolve, in any significant way, the issues before it, but did set in motion processes that may help contribute to the resolution of these issues.

With respect to agricultural trade, the Ministers, in their concluding declaration, agreed "to bring agriculture more fully into the multilateral trading system by improving the effectiveness of GATT rules...and to seek to improve terms of access to markets and to bring export competition under greater discipline." 28/ The Ministers agreed that there should be an examination of the provisions of the GATT relevant to agriculture as well as the operation of the GATT "as regards subsidies affecting agriculture, especially export subsidies, with a view to examining its effectiveness...in promoting the objectives of the General Agreement and avoiding subsidization seriously prejudicial to the trade or interests of contracting parties."

Of more significance was the GATT Ministers' establishment of a Committee on Trade in Agriculture (CTA) to examine and make recommendations on "all measures (affecting) agricultural trade, market access and competition... in agricultural products...." The CTA is mandated to consider: notification and examination of national agricultural policies; improvements in the conditions of market access; and, distortions to competition in agricultural trade by direct and indirect export subsidization. The CTA made its report to the GATT Ministers in the fall of 1984. 29/

Prior to the November GATT Ministerial meeting in Geneva, the Organization for Economic Cooperation and Development (OECD) held a ministerial level meeting (May 1982) that unanimously

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28/ The GATT ministerial declaration is reprinted in U.S. Congress, Senate Committee on Agriculture, Nutrition, and Forestry, Assessment of General Agreement on Tariffs and Trade (GATT) Conference. Hearings, 97th Congress, 2d session. Washington, D.C., U.S. Govt. Print. Off., 1983, pp. 52-59.

29/ This report is discussed below.

endorsed the conclusions of a study, by its Joint Working Party of the Committee for Agriculture and the Trade Committee, on problems of agricultural trade among OECD countries. 30/

The OECD study concluded that the degree of protection afforded agriculture is often greater than needed to achieve desired (domestic policy) objectives. Therefore, reducing the protection afforded countries' individual agricultural sectors may entail smaller modifications of domestic agricultural policies than is often supposed. 31/ The changes required would constitute only marginal adjustments in domestic policies and should be planned and coordinated in a multilateral approach, the study recommended.

The OECD ministers also charged the agriculture and trade committees with the tasks of 1) conducting a study of approaches to achieve a balanced reduction in the protection of agriculture; 2) assessing the links between domestic agricultural policy and trade; and 3) identifying ways to improve the functioning of international commodity markets. The OECD study is due to be completed by the end of 1986. Both the work of the CTA of the GATT and of the agriculture and trade committees of the OECD can be considered as part of the preparation for the next round of multilateral trade negotiations on agriculture.

30/ Organization for Economic Cooperation and Development, Problems of Agricultural Trade. Paris, France, 1983.

31/ OECD, Problems of Agricultural Trade, p. 129-132.

V. UNRESOLVED AGRICULTURAL TRADE ISSUES

The main unresolved issues in agricultural trade include: the use of quantitative restrictions and other nontariff barriers to trade; the effect of subsidies, both export and domestic, on export competition; the problems with GATT dispute settlement procedures; the trade effects of domestic agricultural policies; and agricultural trade relations between developed and developing countries.

Quantitative Restrictions and Other Trade Distorting Measures

Quantitative restrictions and other nontariff barriers to trade, such as quotas, variable levies and voluntary export restraints, are widely used to protect agriculture. For example, according to unofficial U.S. Department of Agriculture (USDA) estimates, as much as 30 percent of world wheat imports are covered by nontariff barriers. If the definition of nontariff barriers is broadened to include export subsidies, foreign exchange controls, state trading and so forth, then the percentage of world wheat imports covered by nontariff barriers rises to more than 90 percent. The United Nations Conference on Trade and Development (UNCTAD) has been compiling inventories of nontariff barriers used by the major trading countries. These estimates prepared for individual countries show that nontariff barriers protect a substantial proportion of agricultural trade, and that the trend is toward increased application of nontariff barriers.

Reductions or eliminations of quantitative restrictions have been difficult to negotiate within the GATT framework. Member countries, including the United States, have been unwilling to negotiate reductions in quotas and other quantitative restrictions because such restrictions keep imports from interfering with the operation of domestic commodity programs. Moreover, there is no generally agreed upon method for negotiating modifications in quantitative restrictions in contrast to those in tariffs.

The variable levy, used extensively by the EEC, illustrates the complexity of negotiating reductions in nontariff barriers. The variable import levy is, in effect, a tax on imports. In that respect it is similar to the customs tariff. Unlike a tariff, however, the variable levy is constantly being adjusted to make the imported product more costly than the domestic product. Reductions in variable levies are thus difficult to negotiate primarily because they are not fixed in amount. The variable levy is also an integral component of the Common Agricultural Policy of the European Economic Community, and is used in large measure to protect EEC producers from competition by lower cost producers in the United States and other countries. As such, the EEC has maintained that the variable levy is an

instrument of domestic policy and, therefore, not subject to multilateral trade negotiation.

Voluntary export restraints, such as those the United States has negotiated with certain meat exporting countries, or with Japan for automobile exports, are another nontariff measure used to protect domestic producers, and are also difficult to negotiate within the GATT context. There is no basis in the General Agreement for voluntary export restraints. As with the quantitative restrictions, there is no commonly accepted method for negotiating their reduction or elimination. But, by negotiating voluntary export restraint agreements, countries avoid the compensation that would be required by GATT under unilateral import restrictions. Also, a voluntary restraint agreement is negotiated; hence the exporting country has some input, which makes the trade restriction less arbitrary.

Export Subsidies

Subsidization of agricultural exports is currently the most contentious trade issue between the United States and the EEC. In recent years, the EEC has substantially increased its export market share of wheat and wheat flour, sugar, poultry, dairy products and beef. The high internal EEC prices for these products have meant that the EEC has had to rely on export subsidies to make sales in world markets. Such subsidies are provided almost automatically under the CAP whenever the above mentioned commodities are in surplus in the Community.

The United States contends that the EEC has not only increased its share of the world market but that it has edged out the United States in some of its traditional markets by selling its exports below world market prices. Markets particularly affected are those in the Middle East for wheat, wheat flour, and poultry. The United States argues that the EEC is in violation of Article XVI of the GATT and of the Subsidies Code negotiated in the Tokyo Round, both of which provide that export subsidies may not be used to gain more than an equitable share of the world market.

The EEC, in general, maintains: that its export subsidies, like its variable levies, are a component of its domestic agricultural policy, the CAP; that its export subsidies have not gained the Community more than its fair share of world export markets; and that, in any event, the United States also uses export subsidies that are in violation of the Subsidies Code. In support of the last argument, the EEC cites the United States' long-term, low interest credits to developing countries under P.L. 480 for food imports, and the subsidized short-term credit provided under the "blended" credit and "export PIK" programs of the U.S. Department of Agriculture. In lieu of restricting its use of export subsidies, the EEC has, in the case of wheat, proposed an agreement on export market shares, offering to limit

its share of world wheat exports to 14 percent. The United States has not accepted this EEC proposal.

The United States presently has cases pending in the GATT concerning the use of export subsidies by the EEC on wheat flour, pasta, and poultry and other products sold in third country markets. 32/ These cases were initiated in the United States by respective industries' filings of petitions under Section 301 of the Trade Act of 1974 (subsequently amended by Title IX of the Trade Agreements Act of 1979 (19 U.S.C. 2411), which provides the United States the legal basis for taking action against practices inconsistent with U.S. rights under a trade agreement or against unfair or discriminatory trade practices, such as the improper use of domestic or export subsidies, which burden or restrict U.S. commerce in products and services. These 301 cases demonstrate the legal and economic complexity of the export subsidy issue. 33/

In the wheat flour case, the United States has charged that the EEC's export subsidy on wheat flour is a subsidy on a processed product and has given the EEC more than an equitable share of world wheat flour exports. The EEC argues, however, that wheat flour is a primary product and therefore its exportation can be subsidized under GATT rules. The EEC further

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32/ Susan Epstein, Agriculture: "Section 301" Unfair Trade Cases, CRS IB 82226 (archived), updated 6/13/84. In addition, information on these cases can be found in Executive Office of the President, Office of the United States Trade Representative, Annual Report of the President of the United States on the Trade Agreements Program, 1984-1985, Washington, U.S. Govt. Print. Off., 1986. pp. 203-206.

33/ The Trade Act of 1974 contains no provision specifically authorizing the referral of section 301 cases to the GATT, but implies in section 304 of the act that such may be the case. The relevant authority for referral of these section 301 cases to the GATT is found in section 2(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2503(b)), which approved various agreements and arrangements of the Tokyo Round, including the Subsidies Code, which provides for referral of subsidy cases to the GATT. Section 301 is a domestic law which authorizes the President to take action; this action may (but does not have to) involve referral to GATT for conciliation. Referral to GATT takes place when the GATT or its Codes require it. Subsidization of exports to the U.S. can be (and overwhelmingly is) handled under countervailing law by U.S. unilateral action without referral to GATT. U.S. subsidization cases that go to GATT are those involving exports to third countries which are also markets for U.S. exports, or those in which we claim violation of the GATT on a subsidized import into the U.S. (e.g., pasta, see discussion below).

contends that even if wheat flour is considered to be a processed product, only the primary product component is subsidized. Furthermore, the EEC claims that it has not used the subsidy to gain more than an equitable share of the market. Following an unsuccessful consultation between the United States and the EEC on this issue from September to December 1981, the Subsidy Code Committee, at the request of the United States, established a panel in January 1982 to examine the subsidies used by the EEC on exports of wheat flour. This was the first panel initiated under any of the codes established during the Tokyo Round.

In March 1983, the panel found that the EEC's share of world wheat flour exports had increased considerably while the United States' and other suppliers' shares had decreased. The Panel recommended that the EEC make greater efforts to limit its use of export subsidies on wheat flour, but did not make a determination regarding the EEC's use of subsidies as a violation of GATT obligations. No determination was made as to whether or not the EEC had used its export subsidies to capture more than an "equitable share" of the market. The Panel's report was submitted for approval to the Subsidies Committee in April of 1983 and its adoption by the Committee is still pending. U.S. officials have expressed dissatisfaction both with the Panel's report and with the length of time the dispute settlement process has taken under the Subsidy Code.

In the pasta case, the United States contends that since pasta is a manufactured product, pasta export subsidies violate the prohibition in the General Agreement and in the Subsidies Code related to nonprimary products. The EEC argues that only the cereal component of pasta (i.e., the primary product component) is being subsidized, not the final product. Although the subsidized pasta allegedly displaced U. S. pasta in the U. S. domestic market, the EEC declined to enter consultations with the United States on this case because it held that the issue is strictly a legal one involving the applicability of GATT primary product rules to pasta. Nevertheless, GATT conciliation procedures were entered into and a GATT Subsidies Code panel upheld the U.S. complaint. The EEC has rejected the panel's report and the United States countered the EEC's rejection with increased tariffs on pasta from the Community. The EEC then retaliated by raising tariffs on U.S. walnuts and lemons. 34/

In the poultry case, the United States argues that the EC's export subsidies on poultry: 1) threaten the interest of the U.S. industry; 2) provide the EEC with more than an equitable share of the market; and 3) materially underprice whole chickens. EEC poultry exports primarily affect U.S. markets in the Middle East. The EEC counters that the price undercutting is only what is required to meet the competition from Brazil--the source of

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34/ Donna U. Vogt, Brief Chronology of the Pasta War Between the U.S. and the EC. CRS 85-1119 ENR. December 17, 1985.

the lowest priced poultry in Middle East markets. The EEC further contends that prohibition of price undercutting in Article X:3 allows the EEC to reduce its price to that of the lowest priced competition in the market. The poultry dispute has been in the conciliation phase since early 1984 and is still pending.

Two section 301 subsidization cases have been concluded. One, not involving the EEC, concerned an alleged violation of the Subsidies Code. The U.S. Rice Millers Association filed in September 1983 a petition with the U.S. Trade Representative alleging that Taiwan was subsidizing its rice exports. Consultations, in line with GATT procedures, were held between the United States and Taiwan in early 1984. As a result, the two parties reached an understanding in February 1984, which has led to limits on subsidized rice exports from Taiwan. The Rice Millers' petition was subsequently withdrawn (March 9, 1984). A second case, involving canned fruits and submitted to GATT in 1982, has also very recently been brought to a conclusion. In this 301 subsidization case, the EEC has agreed to eliminate its processing subsidy on canned peaches and to lower its processing subsidy on canned pears.

The United States has expressed a great deal of frustration at the length of time required to resolve a complaint under the Subsidy Code, the lack of decisiveness of the GATT panels, and the seeming reluctance of the Code Committee to adopt the panel reports. On the other hand, some observers have argued that since these cases are the first to be considered under the new Code on Subsidies, the Code Committee was acting prudently, given the fact that determinations will become precedents for subsequent subsidy disputes.

Dispute Settlement

The present conflict, between the United States, the EEC, and a few other countries, over export subsidies is a manifestation of the larger problem of dispute settlement in GATT. Improving the dispute settlement process was a major item on the agenda of the 1982 GATT Ministerial meeting. At that meeting, GATT members committed themselves to "avoid obstruction" in the dispute settlement process and resolved that no single contracting party should block GATT Council decisions. The Ministers also agreed that the time period for dispute settlement should be shortened.

The United States' objective is to improve the effectiveness of the dispute settlement policies in the GATT, and to get agreement on more definitive rules, particularly for regulating the use of export subsidies. The United States believes that more precise language in the codes would reduce the number of disputes brought to the GATT for resolution and facilitate clearer and more expeditious rulings. The counterview is that

the resolution of disagreements and conflicts over trade issues in the GATT is based essentially on reaching a consensus among the parties to a dispute. Thus, adding more legal precision to GATT prohibitions may not result, in the near term, in more timely or more satisfying dispute settlement procedures.

The notion of consensus as a basis for GATT resolution of disputes may have undergirded the Ministers' decision that "...the understanding on notification, consultation, surveillance and dispute settlement negotiated during the Tokyo Round...provides the essential framework of procedures for the settlement of disputes among contracting parties and [that]...no major change is required in this framework...but there is scope for more effective use of the existing mechanism and for specific improvements in procedures to this end..." 35/ Building such a consensus on the resolution of agricultural trade conflicts among GATT members is a long term process, but probably less frustrating than efforts to get immediate relief in existing dispute settlement procedures.

Domestic Policy Effects on Agricultural Trade

The widely acknowledged link between domestic agricultural policies and trade make the issue of adjusting domestic policies to facilitate trade an important and contentious issue in multilateral trade negotiations. All the other issues discussed above are tied to this one. Almost all the developed country members of GATT pursue agricultural policies that provide some degree of protection to domestic producers. And the United States is no exception.

The United States is self-sufficient in most agricultural products and enjoys a comparative advantage in many products over many other producing nations. Despite these advantages, this country still finds it necessary to employ a variety of measures that restrict imports of agricultural commodities as well as to operate a number of programs to support farm income and prices, and to promote agricultural exports.

Many other countries, without the advantage enjoyed by the United States, also find it necessary to employ domestic policies that protect producers and that have a negative impact on the free flow of trade. The EEC and Japan have domestic policies that particularly tend to distort trade, and the United States has focused its attention upon these two. While the EEC's CAP significantly limits imports, as well as heavily subsidizes exports, Japan's agricultural policy primarily limits access to Japanese markets.

35/ See footnote 28 above.

The objectives of Japanese agricultural policy are to maximize self-sufficiency, maintain farm income at a level equal to urban income, and develop secure sources of food supplies. The inefficiencies of Japanese agriculture require a significant degree of Government involvement in and assistance to the farm sector as well as a variety of import restrictions to protect farmers from lower cost producers overseas. Moreover, memories of past shortages of food supplies due to war, realization of the decline in self-sufficiency, and disruptions of imported food supplies such as the temporary U.S. soybean embargo in 1973, all encourage a protectionist Japanese agricultural policy.

While Japan is the largest country market for U.S. agricultural products, U.S. officials contend that Japanese import restrictions continue to significantly limit imports, particularly imports of processed or semi-processed products. Since the early 1960s when Japan lost its balance-of-payments justification for using quantitative restrictions, the United States and Japan have intensely negotiated Japanese import barriers, especially with regard to beef and citrus. This long-standing trade dispute was eased in mid-1984 when Japanese negotiators agreed to increase import quotas for beef and citrus products over the next four years.

While progress has been made, substantial problems of access remain. The Japanese policy of self-sufficiency and the political strength of the farm sector in that country illustrate the difficult task the United States' negotiators have in attempting to gain increased market access to Japan.

The United States faced an equally difficult task in attempting to persuade the EEC to: 1) liberalize its import restrictions, and 2) eliminate its system of export subsidies; both are integral elements of the Community's Common Agricultural Policy.

One of the founding principles of the CAP is a Community preference for EEC products, achieved through a common tariff system that restricts the entry of competing agricultural products from other countries. This preference system requires price regulations that make imports from non-member countries more expensive or difficult to obtain. Products from non-member countries, often lower-priced than EEC products, are given a threshold--or minimum import--price. This threshold price is set at a level intended to insure that imported commodities cannot undercut target prices set by the EEC to support farm incomes in any major consuming area within the Community. The threshold price is enforced by the variable levy that equalizes the difference between the lower world price and the higher threshold price. Thus, to the EEC consumers imported commodities are usually at least as expensive as domestically produced agricultural products. The major exceptions are soybeans and non-grain

feeds, especially corn gluten feed. Duties on these items were bound at zero under the previous rounds of MTNs. 36/

The EEC also operates a series of programs to support farm income and prices. 37/ The high level of established prices have provided an incentive to producers. These high support prices coupled with the barriers to imports, have resulted in the EEC becoming a surplus producer of wheat, barley, sugar, butter, powdered milk, cheese, beef, poultry, and eggs. Unlike the United States, the Community does not have extensive production adjustment programs nor has it developed much capacity to store surplus commodities with the exceptions of dairy products, some livestock products, and wine. Consequently, to dispose of mounting surpluses, the EEC exports them. Through competitive tenders, the EEC provides export subsidies (known within the EEC as "export restitutions") in whatever amounts are required to bridge the gap between the high internal EEC price and the usually lower world market price. This system results in most surpluses moving into the international market with relatively modest quantities of surplus commodities acquired and stored by domestic intervention agencies.

U.S. complaints against the CAP are numerous. The CAP with its high variable levies limits access of U.S. agricultural exports to the EEC. The unwillingness of the EEC to store larger quantities of surplus commodities or to take land out of production forces the burden of adjustment on to the world market and the United States. Moreover, U.S. officials complain that third country export markets have been lost to the EEC because of the Community's use of export subsidies. The United States is also concerned with the potential adverse impact of the enlargement of the Community by including Spain and Portugal, and the spreading network of preferential trade agreements with former European colonies in the developing world. Finally, while the U.S. welcomes some of the proposed reforms of the CAP, such as reductions in the level of Community prices for major products, it

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36/ The duty-free status of these items remains a contentious issue between the United States and the EEC. Periodically the EEC proposes various restrictions on these imports. In each instance, the United States has strongly protested the proposals. The most recent flare-up occurred in connection with the accession of Spain and Portugal into the Community earlier this year. Under the terms of the accession, the EEC has altered Spain's and Portugal's import systems. The United States alleges that these changes will cost this country some $1 billion in lost sales to the Community. In retaliation, the United States has placed quotas on a number of imports that may affect EEC sales to this country. The EEC has targeted corn gluten and soybean products, among other items, in its counterretaliation proposal. The issue remains unresolved.

37/ Vogt, The Common Agriculture Policy, p. 5-6.

opposes the imposition of a tax on vegetable oils and restrictions on the import of corn gluten and other nongrain feeds which threaten existing access to EEC markets.

The EEC argues that the CAP is not only an agricultural policy but is equally a social policy designed to retain population in rural areas. Furthermore, the EEC holds, the high internal prices of the CAP are needed to maintain a high level of food self-sufficiency, a major goal of the Community, and to provide stability of income to its farmers, particularly in a period when world prices for agricultural commodities are depressed. The EEC further maintains that its domestic assistance programs, domestic subsidies, and export subsidies are legal under the GATT. According to the EEC, the U.S. uses import quotas and other quantitative restrictions that violate the spirit if not the letter of GATT on dairy products, sugar, and meats, and it charges that U.S. domestic agricultural policies also affect trade. 38/ Moreover, the EEC argues that the United States has also been reluctant to negotiate the trade effects of its domestic agricultural policies.

The difficulties involved in reducing the trade effects of domestic agricultural policies are probably as great today as in the Kennedy and Tokyo Rounds. There are some conditions, however, that might lead to progress in this particular area of negotiations. First, there is a growing appreciation on the part of the major trading countries that it is the trade effects of domestic policies not the domestic policies themselves that would be the subject of negotiations. Although some modification of domestic policies may result, neither the objectives of domestic policies, nor the instruments used, need to be replaced on a wholesale basis. Changes at the margin with respect to domestic production subsidies, export assistance measures, trade barriers, etc. can accomplish the objective of incorporating international considerations into domestic agricultural policymaking. Second, there has been some, albeit limited, progress in strengthening GATT provisions on export subsidies. The logical next step may be to strengthen GATT rules and principles with respect to domestic subsidies and other trade-affecting policies. Finally, the strongest factor encouraging the modification or elimination

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38/ In addition to Section 22 import protection (see discussion above), the United States employs a variety of other measures to control the import of certain agricultural commodities. For example, U.S. sugar imports are subject to quotas under Headnote 2 of Part 10A of Schedule 1 of the Tariff Schedules of the U.S. (TSUS). Meat imports are also subject to quotas under the Meat Import Act of 1979. This latter authority has not been used with one exception. Instead, the United States has negotiated voluntary restraint agreements with meat exporting countries. See: U.S. Congress. House. Committee on Ways and Means. Overview of Current Provisions of U.S. Trade Law. Washington, U.S. Govt. Print. Off., 1984. p. 77-83.

of trade distorting aspects of domestic agricultural policies is the growing budgetary cost of agricultural programs, especially in the United States and the European Community. Efforts to reduce the costs of domestic support programs may not only result in reduced budget deficits, but also in reduced trade distortions.

Agricultural Trade Issues Between the Developed and Developing Countries

Agricultural trade issues are part of a larger set of trade problems that complicate the trade relationships between the developed and developing countries. These problems primarily concern access of developing countries to developed country markets and the integration of developing countries into the GATT framework for conducting international trade. 39/

From its inception, GATT has accorded special treatment to the developing countries. Article XVIII of the General Agreement releases the developing countries from certain obligations regarding tariff concessions, balance of payments restrictions, and the use of import quotas to protect domestic industries, but it does not fully exempt the developing countries from the principle of reciprocity in the matter of tariff concessions. The Articles contained in Part IV, added to the General Agreement in 1965, establish the principle that developing countries would not be expected in the course of trade negotiations to make contributions inconsistent with their individual development, financial and trade needs. However, not until 1971 did GATT members agree upon a temporary waiver for developed countries from the most-favored-nation provision of Article I, thereby allowing them to grant preferential treatment to developing countries without having to apply the same concessions to all GATT members.

During the Tokyo Round, this temporary waiver was converted into a permanent and even broader feature of the GATT. GATT members adopted an "enabling clause" that authorizes--notwithstanding the MFN obligation--differential and more favorable treatment of developing countries, not only by developed countries but also among themselves, in tariff and nontariff matters. This enabling clause is the legal basis for developed countries in GATT to accord preferential treatment to imports from developing countries.

39/ Organization for Economic Cooperation and Development, Agricultural Trade with Developing Countries: Trends and Implications for Agricultural Policies in OECD Countries. Paris, 1984. p. 103-107.

Based on these GATT authorities, some 25 developed country members of GATT, including the United States and the EEC member countries, have granted developing countries a large number of preferential and non-reciprocal tariff concessions under a generalized system of preferences (GSP). Approximately $25 billion of both agricultural and nonagricultural exports from developing countries to Western developed countries currently receive GSP treatment. That amounts to about eight percent of total exports from developing to Western developed countries with GSP schemes in operation, and about 14 percent of total developing country exports that are subject to tariffs or other import charges and might therefore be included in GSP schemes. 40/

The various GSP schemes cover principally the manufactured and/or semiprocessed products exported by the developing countries. The coverage of agricultural products is restricted, and only limited or no preferences are granted to such products as textiles, clothing, and footwear. Access for these products is restricted either by product exclusion or by limitations on the preferences granted. In recent years, less than 20 percent of the imports accorded GSP treatment by the United States, the EEC and Japan have been agricultural products.

The developed countries have also granted concessions to the developing countries on tropical products. These products constitute a major proportion of the agricultural exports of developing countries. Significant concessions have been granted on tropical products beginning with the Kennedy Round. The Tokyo Round continued the process of liberalizing this trade by lowering duties and relaxing nontariff barriers on such products as coffee, cocoa, tea, spices, and a variety of other products.

While the developing countries welcome the preferential treatment they receive under GSP and the opening of developed country markets to tropical product exports, there are still access issues of concern to them. Further liberalization of trade in tropical products is a continuing but less contentious issue. Tropical products that compete with temperate zone products have been excluded or subject to limitations in the GSP. Tropical products in processed or semi-processed form are also generally subject to higher tariffs or other import barriers by the developed countries. The issue of further liberalization in tropical products is likely to appear on the agenda of any future MTN since the GATT ministers have committed their members to work on consultation and negotiations aimed at further liberalization of trade in tropical products.

In certain instances, the prevalence of higher rates of duties on processed and semi-processed products in contrast to primary products (tariff escalation) is an obstacle both to

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40/ OECD, Agricultural Trade, 1984, Table 3.11, p. 88.

further extending GSP product coverage and to general liberalization of trade. The developing countries remain concerned that nontariff barriers appear to fall more heavily on the product sectors in which they are low cost producers, e.g., sugar, textiles, clothing, and footwear.

The other major issue concerns the fuller integration of developing countries into the GATT trading system. The enabling clause agreed to in the Tokyo Round, which provides the legal basis in GATT for preferential treatment of the developing countries, also states that with progressive "development" in their economies and "improvement in their trade situation," developing countries would expect to participate more fully in the framework of rights and obligations under the GATT. The United States has taken the lead both during the Tokyo Round and more recently in the GATT Ministerial Conference in linking the economic and/or commercial development of the developing countries to "graduation," under which the scope of the preferential treatment of individual developing countries would be gradually decreasing, and would eventually lead to revocation of the GSP treatment altogether. Developing countries are expected to take on greater obligations as their economic situations improve. The middle income or newly industrializing developing countries, such as Brazil, Mexico, Taiwan, and Korea, have been used as examples of candidates for graduation from GSP schemes. Under most concepts of graduation, the least developed countries would continue to receive preferential treatment.

While the principle of graduation is largely accepted as valid, the process of graduation is controversial. A major problem is definitional. What criteria are to be used to measure "development" and "improvements in their trade situation?" Recent slow growth in the developing countries and reduced foreign exchange earnings from their principal exports have made it even more difficult to determine criteria for graduation. Some developing countries view the concept as a rationale for premature withdrawal of preferences or imposition of other protectionist measures against their exports. Nevertheless, graduation is likely to be a major issue in the next round of trade negotiations.

VI. APPROACHES TO THE NEW ROUND OF TRADE NEGOTIATIONS

The Committee on Trade in Agriculture (CTA) made its report in November of 1984 to a GATT Council Meeting. The broad outlines of an approach to liberalizing agricultural trade were identified. The Committee focused on strengthening Article XI, which concerns the general elimination of quantitative restrictions, and on prohibiting export subsidies. The CTA recommended that "substantially all measures affecting trade in agriculture ... be brought under more operationally effective GATT rules and disciplines." 41/ The goals of broadening GATT coverage are to improve market access; to bring export competition under greater discipline; and to reinforce the links under Article XI and XVI between national policies and trade measures in order to "... define the limits to the effects of domestic agricultural policies on trade."

Under this approach according to CTA recommendations, all quantitative restrictions would be brought under GATT rules. Included would be the restrictions maintained under waivers, such as U.S. Section 22 quotas, and other exceptions, and also the importing and exporting activities of state-trading or similar enterprises. Other barriers such as voluntary export restraint agreements, variable levies, unbound tariffs, and minimum import prices would be included in the approach. The CTA recommends the development of procedures to minimize the adverse effects that protective health, technical, and administrative barriers can have on agricultural trade.

A second approach put forth by the CTA is a general prohibition on the use of export subsidies, with carefully defined exceptions to be worked out, as well as prohibitions on other forms of export assistance. This would be accomplished either through new rules or by strengthening existing rules.

The CTA also calls for subjecting the domestic and agricultural trade policies of the contracting parties to regular review and examination. Such review and examination would be implemented on a permanent basis to ensure fuller "transparency" for policies and measures that affect trade in agriculture.

The recommendations of the CTA represent a broad approach to the negotiation of reductions in agricultural trade barriers. It also represents a consensus at the working level and policy level among GATT members about the approach to be taken. At the Council's request the CTA is proceeding to identify specific measures consistent with its broad recommendations.

41/ GATT, Committee on Trade in Agriculture, Recommendations, Geneva, November, 1985.

There are many different measures that could be used to accomplish the broad objective of agricultural trade liberalization. 42/ The following is a list of measures that could contribute to bringing agricultural trade more fully into the GATT framework:

1. Reducing and binding tariffs and levies;

2. Establishing tariff-free and levy-free quotas;

3. Abolishing quantitative restrictions, binding them, or negotiating a time table for phasing them out;

4. Including bilateral voluntary export restraints under the authority of the GATT;

5. Prohibiting assistance to agricultural exports, reducing it according to a formula, or limiting assistance to maximum rates;

6. Establishing rising minimum access commitments or maximum self-sufficiency ratios in order to reduce the effects of domestic support policies and to ensure market access;

7. Reducing and binding the level of price support and phasing out over time the protection provided by domestic policies that affect import requirements or export availabilities;

8. Negotiating international commodity agreements with economic provisions (e.g., pricing, and/or market sharing or stocking arrangements) as well as consultative provisions;

9. Strengthening the codes of conduct agreed to in the Tokyo Round to make legal obligations thereunder more precise;

10. Developing international arrangements for consultation among agricultural and trade policy makers on the trade effects of domestic agricultural policies.

42/ A number of possible measures to apply to agriculture trade are discussed in Yeats, Alexander J., "Agricultural Protectionism: An Analysis of its International Economic Effects and Options for Institutional Reform" in Trade and Development, an UNCTAD Review, No. 3, Winter 1981, p. 1-30; Josling, T.E. Agriculture in the Tokyo Round Negotiations, Thames Essay #10, London, Trade Policy Research Center, 1977; and Warley, T.K. and Yves Surrey, Trade in Agricultural Products: Conflict and Compromise, Unpublished Mimeograph, University of Guelph, Guelph, Ontario, Canada, 1983.

11. Developing criteria, (e.g., income level, export market shares), for "graduation" from GSP for middle income developing countries while maintaining or expanding GSP for the low-income developing countries.

APPENDIX 1

Dispute Settlement Procedures of the GATT and of the Codes on Subsidies and Countervailing Duties

Articles XXII and XXIII set forth the general procedures for resolving disputes that may arise between members of GATT.43/ In addition, the codes of conduct agreed upon during the Tokyo Round (1973-79) include more detailed provisions for dispute settlement in specific areas.

This Appendix reproduces in their entirety the texts of Articles XXII and XXIII of the General Agreement, 44/ and outlines the dispute settlement provisions of the Code on Subsidies and Countervailing Duties (technically known as the "Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade") as an example of the procedure and practice of dispute settlement in GATT.

Article XXII
Consultation

1. Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by another contracting party with respect to any matter affecting the operation of this Agreement.

2. The CONTRACTING PARTIES 45/ may, at the request of a contracting party, consult with any contracting party or parties in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.

43/ In addition to the main provisions for dispute settlement contained in these two articles, there are 19 other references to dispute settlement procedures in the General Agreement. See John H. Jackson, World Trade and the Law of GATT, Indianapolis, Bobbs-Merrill Company, Inc., 1969, p. 165.

44/ GATT, Basic Instruments and Selected Documents, Vol. 4, Geneva, 1974.

45/ Contracting parties in upper case denotes the GATT contracting parties acting as a body.

Article XXIII

Nullification or Impairment

1. If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of

(a) the failure of another contracting party to carry out its obligations under this Agreement, or

(b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or

(c) the existence of any other situation, the contracting party may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other contracting party or parties which it considers to be concerned. Any contracting party thus approached shall give sympathetic consideration to the representations or proposals made to it.

2. If no satisfactory adjustment is effected between the contracting parties concerned within a reasonable time, or if the difficulty is of the type described in paragraph 1(c) of this Article, the matter may be referred to the CONTRACTING PARTIES. The CONTRACTING PARTIES shall promptly investigate any matter so referred to them and shall make appropriate recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter, as appropriate. The CONTRACTING PARTIES may consult with contracting parties, with the Economic and Social Council of the United Nations and with any appropriate inter-governmental organization in cases where they consider such consultation necessary.

If the CONTRACTING PARTIES consider that the circumstances are serious enough to justify such action, they may authorize a contracting party or parties to suspend the application to any other contracting party or parties of such concessions or other obligations under this Agreement as they determine to be appropriate in the circumstances. If the application to any contracting party of any concession or other obligation is in fact suspended, that contracting party shall then be free, not later than sixty days after such action is taken, to give written notice to the Executive Secretary to the CONTRACTING PARTIES of its intention to withdraw from this Agreement and such withdrawal shall take effect upon the sixtieth day following the day on which such notice is received by him.

While some 90 nations are general GATT signatories, only 23 entities, including the United States, and counting the 12 EEC members as one entity, are signatories of the more specific Subsidies and Countervailing Duties Code of the GATT. This provides guidelines for the countervailing of subsidized exports and for the acceptable use of subsidies, a procedure for settling disputes over subsidy use through consultations, conciliation guidelines for countermeasures that may be taken if conciliation fails, and special provisions for subsidies of developing countries.

According to the Code, export subsidies on all nonprimary products and primary mineral products are prohibited. Export subsidies on other primary products, e.g., forest or fishery products, may be legal if the subsidy does not result in price undercutting or in the exporting country's gaining more than an equitable share of the world trade in the commodity, that is, displacing the exports of another signatory. Domestic subsidies are not prohibited by the Code; rather, it provides guidelines to assist the subsidizing nation in preventing the subsidy from having an adverse effect on the international trade interests of other signatories or causing or threatening to cause "serious prejudice" to competitors' products. In situations where an export subsidy has resulted in displacing exports from other sources or where a domestic subsidy has resulted in import substitution in the domestic market or displacement of a product in the complaining country, the Code provides a procedure for resolution.

Consultations between the nations involved in a dispute constitutes the first step of the dispute procedure. Any country under the Code may request consultations with the signatory it believes to be granting a subsidy inconsistent with the provisions of the Code. The parties involved have 30 days in the case of an export subsidy, and 60 days in the case of any other subsidy that causes injury, affects existing trade benefits, or seriously prejudices the interests of a signatory, to arrive at a mutually acceptable solution to the problem. These periods can be extended by mutual agreement.

If a mutually acceptable solution cannot be found through normal bilateral consultations, then either party is free to begin the conciliation procedure outlined in the multilateral dispute settlement provision of the Code by referring the dispute to the Committee of Signatories, which consists of representatives of all the signatories to the Code. During this conciliation process, the Committee members review the case and encourage the parties to find a solution. During the review, the Committee is also free to reject further consideration of those cases where it finds no reasonable supporting evidence of allegations made by the complaining party.

If after 30 days of conciliation no agreement is reached, then any party to the dispute may request that a panel of experts

be established to review the case. This panel is usually made up of 3 or 5 people, none of whom are citizens of the countries involved. The panel must be established within 30 days after the request is made and has 60 days in which to present its findings. The panel's report should include its views as to whether subsidization has taken place and the subsidy has been used inconsistently with the Code's guidelines. The Committee then considers the panel's report and is required to recommend a solution within 30 days. If these are not carried out, it can authorize retaliatory countermeasures.

The preceding discussion focused on the Code's anti-subsidy provisions and dispute settlement provisions that guide the international response to possible violations of GATT rules on subsidies. As a 1980 International Trade Administration (ITA) booklet noted, in resolving a dispute on a country's violation of the rules on subsidies, the action authorized by the Committee might be circumscribed to a large degree by the nature of a subsidy. For example, in the context of the Code's dispute settlement procedures, the use of an export subsidy on a manufactured product (prohibited by the Code) is much more likely to lead to the authorization of countermeasures than would the use of a domestic subsidy (the use of which is restricted only where there are demonstrable adverse effects on trade). However, a much different situation exists with regard to the use of a countervailing duty. 46/

Under the Code, countervailing duties are intended to protect enterprises in an importing country against injury from subsidized imports. Countervailing duties may be imposed against subsidized imports into a country's market if these imports are found to be causing or threatening to cause material injury to an industry producing a like product in that country. 47/ In this context, it is immaterial whether the imported good benefits from an export subsidy or a domestic subsidy--both subsidies are equally "countervailable."

46/ The discussion of countervailing duties in this and succeeding paragraphs is taken directly from Subsidies and Countervailing Measures, Vol. 1, International Trade Administration, U.S. Department of Commerce (by Andrew Stoler), May 1980, pp. 6-9.

47/ U.S. law requires a prior test of material injury to a domestic industry only in the case of: (a) imports from other countries which adhere to the "Subsidies Code" or a substantially equivalent agreement; (b) duty-free imports from countries which are contracting parties to the General Agreement on Tariffs and Trade; and, (c) imports originating in Venezuela, Honduras, Nepal, North Yemen, El Salvador, Paraguay and Liberia. Other subsidized imports may be countervailed under the old countervailing statute (sec. 303, Tariff Act of 1930) whose provisions are grandfathered under GATT.

Countries do have different views on the use of countervailing duties, however, and one of the Code's objectives is the establishment of a uniform international system for the use of countervailing duties when there is an actual or threatened problem with subsidized imports.

The Code clearly sets down the conditions under which countervailing duties may be imposed against subsidized imports. 48/ Under the Code, a government may begin an investigation into the existence of a subsidy only when it has sufficient evidence of the likelihood that (a) a subsidy exists, (b) there may be material injury to a domestic industry, and (c) there is a causal link between the alleged subsidy and the injury to the industry. Normally, these investigations are to be initiated upon a written request by or on behalf of the industry affected. However, in special circumstances, the Code does allow for the initiation of an investigation without a request if there is sufficient evidence of injury caused by subsidized imports. Consistent with the Code, U.S. law permits the initiation of a countervailing duty investigation by the Government, if such action is warranted.

Before an investigation can be initiated, the government proposing the investigation must afford the government alleged to be providing the subsidy a reasonable opportunity to enter into consultations with the aim of clarifying the situation. These consultations are not intended to impede or delay the conduct of the investigation.

When an investigation is formally initiated, the Code requires that public notice be given and that the evidence of both the subsidy and injury caused by subsidized imports be considered simultaneously. The Code also requires that public notice be given at any point where the authorities investigating the case reach either preliminary or final determinations, whether or not the determinations are positive or negative. The Code specifies that, except in special circumstances, countervailing duty investigations should be concluded within a year of their initiation.

If after sufficient investigation, a preliminary affirmative determination is reached that a subsidy does exist and there is sufficient evidence of injury, investigating authorities are permitted to impose provisional measures against the imported

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48/ Although countervailing procedure is spelled out in the Code, it does not involve any GATT action, but is usually unilateral on the part of the injured country. Countervailing action does not require GATT review or approval. Subsidization cases go to GATT primarily when countervailing action is not possible (e.g., exports to third countries or when a GATT ruling on the GATT legality of a subsidy situation is appropriate such as in the U.S.--EEC pasta case).

products under investigation. These measures may take the form of provisional countervailing duties or they may be cash deposits or bonds equal to the estimated amount of the net subsidy borne by the imported product. Under certain circumstances specified in the Code, countervailing duties may also be levied retroactively on those imports entered for consumption not more than 90 days prior to the application of provisional measures.

Only after a final determination has been reached that a subsidy exists and that subsidized imports are causing or threatening to cause material injury to a domestic industry can definitive countervailing duties be imposed on subsidized imports. When a definitive countervailing duty is imposed, the Code requires that it shall not be levied in an amount exceeding the amount of subsidy found to exist, calculated in terms of subsidization per unit of the product imported into the country. Further, countervailing duties may remain in effect only as long as the imported products continue to benefit from subsidies and the countervailing duty is judged necessary to counteract the subsidization which is causing injury.

Under the Code, investigative proceedings in a countervailing duty case may be suspended or terminated without the imposition of provisional measures or countervailing duties if an agreement known as an "undertaking" can be satisfactorily negotiated between investigating authorities in the importing country and either the government or exporters in the exporting country. Typically, this would be a government-to-government agreement, where the government of the exporting country would undertake to eliminate or limit the subsidy or take other measures concerning its effects with the aim of eliminating the possibility of injury to an industry in the importing country. The Code also allows price undertakings from exporting firms designed to eliminate injury, provided that the government of the exporting country consents to such an agreement.

Any undertakings that might be accepted are not permitted to remain in effect for a period longer than would have been the case had countervailing duties been applied. In addition, while the acceptance of undertakings permits a suspension of proceedings, an investigation of injury may still be necessary if it is deemed desirable by either the government of the exporting country or authorities in the importing country.

Since the countervailing procedure required by the Subsidies Code differs greatly from the U.S. procedure under the old countervailing law, a new, detailed countervailing law was enacted in addition to the existing law in the Trade Agreements Act of 1979 to cover the situations resulting from U.S. acceptance of the Code.

APPENDIX 2

Trade Legislation

Congress granted the President authority to enter into foreign trade agreements and to proclaim changes in tariffs in three major trade acts of 1934, 1962, and 1974. It was under these major acts, and their extensions, that the U.S. negotiated reciprocal tariff concessions, mostly in the multilateral trade rounds within the framework of the General Agreement on Tariffs and Trade. When non-tariff barriers became an important issue beginning in the late 1960s, Congress, in the Trade Act of 1974, as amended, also authorized the President, through January 3, 1988, to enter into trade agreements to "harmonize, reduce, or eliminate" non-tariff barriers to trade and other distortions of trade. The following table lists the major trade acts, their extensions, and their provisions relevant to the subject matter discussed in this report.

TABLE 1.--U.S. LEGISLATION AUTHORIZING TRADE AGREEMENTS, THEIR IMPLEMENTATION AND SELECTED TRADE MEASURES

Trade Agreements Act of 1934 (P.L. 73-316; 48 Stat. 943; June 12, 1934; 19 USC 1351)	Authorizes the President for 3 years to enter into trade agreements, and proclaim changes in import duties and restrictions; requires nondiscriminatory application of such changes.
Trade Agreements Extension Act of 1937 (P. Res. 75-10; 50 Stat. 24; March 1, 1937)	Extends trade agreements authority for 3 years from June 12, 1937.
Trade Agreements Extension Act of 1940 (P. Res. 76-61; 54 Stat. 107; April 12, 1940)	Extends trade agreements authority for 3 years from June 12, 1940.
Trade Agreements Extension Act of 1943 (P.L. 78-66; 57 Stat. 125; June 7, 1943)	Extends trade agreements authority for 2 years from June 12, 1943.
Trade Agreements Extension Act of 1945 (P.L. 79-130; 59 Stat. 410; July 5, 1945)	Extends trade agreements authority for 3 years from June 12, 1945.
Trade Agreements Extension Act 1948 (P.L. 80-792; 62 Stat. 1053; June 26, 1948)	Extends trade agreements authority through June 30, 1949.

Trade Agreements Extension Act of 1949 (P.L. 81-301; 63 Stat. 697; September 26, 1949)	Repeals the 1948 act; extends trade agreements authority for 3 years from June 12, 1948.
Trade Agreements Extension Act of 1951 (P.L. 82-50; 65 Stat. 72; June 16, 1951)	Extends trade agreements authority for 2 years from June 12, 1951.
Trade Agreements Extension Act of 1953 (P.L. 83-215); 67 Stat. 472; August 7, 1953)	Extends trade agreements authority for 1 year from June 12, 1953.
Trade Agreements Extension Act of 1954 (P.L. 83-464; 68 Stat. 360; July 1, 1954)	Extends trade agreements authority for 1 year from June 12, 1954.
Trade Agreements Extension Act of 1955 (P.L. 84-86; 69 Stat. 162; June 21, 1955)	Extends trade agreements authority through June 30, 1958.
Trade Agreements Extension Act 1958 (P.L. 85-686; 72 Stat. 673; August 20, 1958)	Extends trade agreements authority through June 30, 1962.
Trade Expansion Act of 1962 (P.L. 87-794; 76 Stat. 872; October 11, 1962; 19 USC 1821)	Authorizes the President, through June 30, 1967, to enter into trade agreements, and proclaim changes in import duties and restrictions.
Trade Act of 1974 (P.L. 93-618; 88 Stat. 1982, 1990, 2071; January 3, 1975; 19 USC 2111, 2112, 2134, 2465)	Authorizes the President, for a 5-year period from date of enactment, to enter into duty-reducing trade agreements, and proclaim changes in import duties and restrictions, and into agreements on non-tariff barriers and other trade distortions, subject to subsequent implementation by enactment; provides residual authority for 2 additional years to enter into agreements on limited modifications of duties and proclaim such changes; authorizes the generalized system of preferences for 10 years after enactment date.
Trade Agreements Act of 1979 (P.L. 96-39; 93 Stat.	Approves non-tariff-barrier agreements concluded in the

147, 307, 151 et seq.; July 26, 1979; 19 USC 2503, 2112, 1671 et seq.)	Tokyo Round (including various Codes); extends the nontariff-barrier authority to a period of 13 years (through January 2, 1988); sets up a new countervailing procedure, consonant with the GATT Subsidies Code.
Trade and Tariff Act of 1984 (P.L. 98-573; 98 Stat. 3023; October 30, 1984; 19 USC 2465)	Extends the Generalized System of Preferences through July 3, 1993.

APPENDIX 3

Tokyo Round Codes of Conduct 49/

Among the results of the Tokyo Round of negotiations were several codes of behavior related to non-commodity specific trade issues, some more relevant to agriculture than others. This appendix briefly describes those codes. Each code is introduced by its commonly accepted name with its formal title in parentheses.

1) The Subsidies and Countervailing Duties Code (Agreement on Interpretation and Application of Articles VI, XVI and XIII of the GATT).

The key provisions of this code with respect to agriculture are that countries should not use export subsidies in a manner that displaces the exports of others, that countries should not use domestic subsidies or other domestic measures that materially affect trade, and that importers and competing exporters affected by export subsidies may impose countervailing duties if they can demonstrate 1) the existence of a subsidy, 2) "injury" to the affected domestic industry, and 3) a causal link between the two. The Code also outlines procedures for settling disputes over subsidy use through consultations, and defines the circumstances under which subsidies can cause injury.

2) Standards Code (Agreement on Technical Barriers to Trade).

This code is designed to discourage the use of product standards, product testing, and product certification systems as unnecessary barriers to trade. The certification systems are to be non-discriminatory, to be applied equally to domestic producers and code signatories, and to be specified in terms of performances rather than design or descriptive characteristics.

3) Antidumping Agreement (Agreement on the Implementation of Article VI).

Under GATT rules, dumping occurs when the price to the importer of a product is lower than the "normal" price of the product charged to buyers in the country of origin or in third countries. Article VI permits anti-dumping duties to be levied to compensate for this price difference if such imports cause or

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49/The following discussion is derived from "Agriculture and the MTN," Foreign Agriculture, July 1979, pp. 7, 8, 30; and U.S. Congress, Senate Committee on Finance, MTN Studies: Results for U.S. Agriculture, June 1979, pp. 213-218.

threaten material injury to the competing industry in the importing country. The Code sets guidelines on the conduct of antidumping investigations and the imposition, collection, and duration of antidumping duties.

4) Import Licensing Code (Agreement on Import Licensing Procedures).

The purpose of this code is to simplify and harmonize the procedures which importers must follow in obtaining import licenses, so that these procedures do not themselves constitute an unnecessary obstacle to trade.

5) Customs Valuation Agreement (Agreement on the Implementation of Article VII of the GATT).

The code is designed to establish a uniform international system of rules to determine the customs value of imported goods on an ad valorem basis. The primary purpose of the Agreement is to allow exporters and importers to predict how their goods will be valued by customs officials.

6) Government Procurement Code (Agreement on Government Procurement).

This code contains detailed rules on the way in which tenders for government purchasing contracts should be invited and awarded. It is intended to discourage discrimination against foreign suppliers when governments purchase articles for their own use. This code has little impact on agriculture since agricultural procurement programs are excluded from the code.

7) Code on Civil Aircraft (Agreement on Trade in Civil Aircraft).

This code has no relevance for agriculture.

In addition, a code on safeguards was considered during the Tokyo Round but negotiations were never completed. The proposed code would define and elaborate existing GATT provisions regarding the rights of countries to use temporary import restrictions to avoid serious injury to domestic producers.

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